

Organization Approval (DOA). Replacement of an MLG support rib does not terminate the repetitive inspections required by paragraph (h) of this AD.

#### (j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (j)(1) through (j)(15) of this AD.

(1) Airbus Service Bulletin A330-57A3096, dated December 5, 2006, which was incorporated by reference in AD 2007-03-04, Amendment 39-14915 (72 FR 4416, January 31, 2007) ("AD 2007-03-04").

(2) Airbus Service Bulletin A330-57A3096, Revision 01, dated April 18, 2007, which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A330-57-3096, Revision 02, dated August 13, 2007, which was incorporated by reference in AD 2007-22-10, Amendment 39-15246 (72 FR 61796, November 1, 2007; corrected November 16, 2007 (72 FR 64532)) ("AD 2007-22-10").

(4) Airbus Service Bulletin A330-57-3096, Revision 03, dated October 24, 2012, which is not incorporated by reference in this AD.

(5) Airbus Service Bulletin A330-57-3096, Revision 04, dated February 6, 2013, which is not incorporated by reference in this AD.

(6) Airbus Service Bulletin A330-57-3096, Revision 05, dated October 17, 2013, which was incorporated by reference in AD 2015-03-06.

(7) Airbus Service Bulletin A340-57A4104, dated December 5, 2006, which was incorporated by reference in AD 2007-03-04.

(8) Airbus Service Bulletin A340-57-4104, Revision 01, dated August 13, 2007, which is not incorporated by reference in this AD.

(9) Airbus Service Bulletin A340-57-4104, Revision 02, dated September 5, 2007, which was incorporated by reference in AD 2007-22-10.

(10) Airbus Service Bulletin A340-57-4104, Revision 03, dated October 24, 2012, which is not incorporated by reference in this AD.

(11) Airbus Service Bulletin A340-57A5009, dated December 5, 2006, which was incorporated by reference in AD 2007-03-04.

(12) Airbus Service Bulletin A340-57-5009, Revision 01, dated August 13, 2007, which was incorporated by reference in AD 2007-22-10.

(13) Airbus Service Bulletin A340-57-5009, Revision 02, dated October 24, 2012, which is not incorporated by reference in this AD.

(14) Airbus Alert Operators Transmission A57L005-14, dated July 15, 2014, which is not incorporated by reference in this AD.

(15) Airbus Alert Operators Transmission A57L005-14, Revision 01, dated August 20, 2014, which is not incorporated by reference in this AD.

#### (k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs)*: The Manager, International Branch, ANM-116, Transport Airplane

Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057-3356; telephone 425-227-1138; fax 425-227-1149. Information may be emailed to: [9-ANM-116-AMOC-REQUESTS@faa.gov](mailto:9-ANM-116-AMOC-REQUESTS@faa.gov). Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer*: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

#### (l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015-0120, dated June 26, 2015, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-4815.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(5) and (m)(6) of this AD.

#### (m) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on June 30, 2016.

(i) Airbus Service Bulletin A330-57-3096, Revision 06, dated May 29, 2015.

(ii) Reserved.

(4) The following service information was approved for IBR on March 25, 2015 (80 FR 8511, February 18, 2015).

(i) Airbus Service Bulletin A340-57-4104, Revision 04, dated October 17, 2013.

(ii) Airbus Service Bulletin A340-57-5009, Revision 03, dated October 17, 2013.

(5) For service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 12, 2016.

**Suzanne Masterson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-11931 Filed 5-25-16; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2016-6892; Directorate Identifier 2016-NM-057-AD; Amendment 39-18529; AD 2016-11-02]

**RIN 2120-AA64**

#### Airworthiness Directives; Bombardier, Inc. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for all Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes; Model CL-600-2D15 (Regional Jet Series 705) airplanes; Model CL-600-2D24 (Regional Jet Series 900) airplanes; and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. This AD requires a detailed visual inspection of the upper and lower engine pylons for protruding, loose, or missing fasteners; and repair, including applicable related investigative and corrective actions, if necessary. This AD was prompted by reports of loose or

missing Hi-Lite fasteners on the upper and lower engine pylon structure common to the upper and lower pylon skin panels and engine thrust fitting. We are issuing this AD to detect and correct protruding, loose, or missing fasteners, which could result in structural failure of the engine pylons.

**DATES:** This AD becomes effective June 10, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 10, 2016.

We must receive comments on this AD by July 11, 2016.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* 202-493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); Internet <http://www.bombardier.com>. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221. It is also available on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-6892.

#### *Examining the AD Docket*

You may examine the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-6892; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800-647-5527) is in the **ADDRESSES**

section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE-171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7329; fax 516-794-5531.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF-2016-10, dated April 27, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes; Model CL-600-2D15 (Regional Jet Series 705) airplanes; Model CL-600-2D24 (Regional Jet Series 900) airplanes; and Model CL-600-2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

There have been several reported findings of loose or missing Hi-Lite fasteners on the left hand (LH) and right hand (RH) upper and lower engine pylon structure common to the upper and lower pylon skin panels and engine thrust fitting. Missing fasteners in these areas are shown to significantly reduce the safety margins and could result in a structural failure of the engine pylon.

Bombardier has issued a new Aircraft Maintenance Manual (AMM) task for detailed inspection of the engine pylon rib and skin fasteners to inspect for protruding, loose or missing fasteners and rectify any discrepancies [repair including applicable related investigative and corrective actions] noted in accordance with a Repair Engineering Order (REO).

This AD is issued to mandate a repeat inspection to mitigate the risk of a structural failure of the engine pylons and repair any loose or missing fasteners as required.

Related investigative actions include visual inspections for cracks. Corrective actions include repair. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-6892.

#### **Related Service Information Under 1 CFR Part 51**

We reviewed Bombardier Repair Engineering Order 670-54-51-034, “Repair for Missing or Loose/Protruding Fasteners in Upper and Lower Pylon Skins FS 1088-FS 1098, PBL 69.3 L & RHS,” dated March 7, 2016. The service information describes procedures for repair, including applicable related investigative and corrective actions.

We also reviewed Bombardier Temporary Revision 54-0007, dated March 8, 2016, to the CRJ700/900/1000 AMM. The service information describes procedures for a detailed visual inspection for protruding, loose, or missing fasteners of the left-hand and right-hand upper and lower engine pylons.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

#### **FAA’s Determination and Requirements of This AD**

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of this same type design.

#### **FAA’s Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because loose or missing Hi-Lite fasteners on the upper and lower engine pylon structure common to the upper and lower pylon skin panels and engine thrust fitting could result in structural failure of the engine pylons. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

#### **Comments Invited**

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2016-6892; Directorate Identifier 2016-NM-057-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may

amend this AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

#### Costs of Compliance

We estimate that this AD affects 531 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be \$45,135, or \$85 per product.

In addition, we estimate that any necessary follow-on actions will take up to 32 work-hours for a cost of \$2,720 per product, plus the cost of parts. We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will

not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

**2016-11-02 Bombardier, Inc.:** Amendment 39-18529. Docket No. FAA-2016-6892; Directorate Identifier 2016-NM-057-AD.

##### (a) Effective Date

This AD becomes effective June 10, 2016.

##### (b) Affected ADs

None.

##### (c) Applicability

This AD applies to all the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL-600-2C10 (Regional Jet Series 700, 701, & 702) airplanes.

(2) Bombardier, Inc. Model CL-600-2D15 (Regional Jet Series 705) airplanes.

(3) Bombardier, Inc. Model CL-600-2D24 (Regional Jet Series 900) airplanes.

(4) Bombardier, Inc. Model CL-600-2E25 (Regional Jet Series 1000) airplanes.

##### (d) Subject

Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

##### (e) Reason

This AD was prompted by reports of loose or missing Hi-Lite fasteners on the upper and lower engine pylon structure common to the upper and lower pylon skin panels and engine thrust fitting. We are issuing this AD to detect and correct protruding, loose, or missing fasteners, which could result in structural failure of the engine pylons.

##### (f) Compliance

Comply with this AD within the compliance times specified, unless already done.

##### (g) Inspection

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, do a detailed visual inspection for protruding, loose, or missing fasteners of the upper and lower engine pylons, in accordance with Bombardier Temporary Revision (TR) 54-0007, dated March 8, 2016, to the CRJ700/900/1000 Aircraft Maintenance Manual. Repeat the inspection thereafter at intervals not to exceed 1,500 flight hours.

(1) For airplanes that have accumulated more than 840 total flight hours as of the effective date of this AD: Inspect within 660 flight hours or 3 months, whichever occurs first, after the effective date of this AD.

(2) For airplanes that have accumulated 840 total flight hours or less as of the effective date of this AD: Inspect before the accumulation of 1,500 total flight hours.

##### (h) Repair

If any protruding, loose, or missing fastener is found during any inspection required by paragraph (g) of this AD, before further flight, repair, including applicable related investigative and corrective actions, in accordance with Bombardier Repair Engineering Order (REO) 670-54-51-034, "Repair for Missing or Loose/Protruding Fasteners in Upper and Lower Pylon Skins FS 1088-FS 1098, PBL 69.3 L & RHS," dated March 7, 2016, except where Bombardier REO 670-54-51-034, "Repair for Missing or loose/Protruding Fasteners in Upper and Lower Pylon Skins FS 1088-FS 1098, PBL 69.3 L & RHS," dated March 7, 2016, specifies to contact Bombardier for further instruction, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

##### (i) Credit for Previous Actions

This paragraph provides credit only for the initial inspection specified in paragraph (g) of this AD, if that action was performed before the effective date of this AD using Bombardier Reference Instruction Letter 4212, dated December 23, 2015; or Bombardier Reference Instruction Letter 4212A, Revision A, dated January 28, 2016. This service information is not incorporated by reference in this AD.

##### (j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO,

ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; fax 516-794-5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE-170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

#### (k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF-2016-10, dated April 27, 2016, for related information. You may examine the MCAI on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2016-6892.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (l)(3) and (l)(4) of this AD.

#### (l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Repair Engineering Order 670-54-51-034, "Repair for Missing or Loose/Protruding Fasteners in Upper and Lower Pylon Skins FS 1088-FS 1098, PBL 69.3 L & RHS," dated March 7, 2016.

(ii) Bombardier Temporary Revision 54-0007, dated March 8, 2016, to the CRJ700/900/1000 Aircraft Maintenance Manual.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; email [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); Internet <http://www.bombardier.com>.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

[www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

Issued in Renton, Washington, on May 17, 2016.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016-12157 Filed 5-25-16; 8:45 am]

**BILLING CODE 4910-13-P**

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

**RIN 3235-AL19**

[Release No. 34-77874; File No. S7-30-11]

### Retail Foreign Exchange Transactions

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Expiration of regulation.

**SUMMARY:** Rule 15b12-1, by its terms, will expire and no longer be effective on July 31, 2016. Interested persons should be aware that as of that date, any broker or dealer, including a broker or dealer that is also dually registered as a futures commission merchant ("BD/FCM"), shall be prohibited under the Commodity Exchange Act ("CEA") from offering or entering into a transaction described in the CEA with a person who is not an eligible contract participant ("retail forex transaction").

**DATES:** May 26, 2016.

#### FOR FURTHER INFORMATION CONTACT:

Paula Jenson, Deputy Chief Counsel; Catherine Moore, Senior Special Counsel; or Stephen J. Benham, Special Counsel, at (202) 551-5550 or Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-7010.

**SUPPLEMENTARY INFORMATION:** Section 2(c)(2)(E) of the CEA, as added by the Dodd-Frank Wall Street Reform and Consumer Protection Act, provides that a person for which there is a Federal regulatory agency, including a broker-dealer registered under Section 15(b) (except pursuant to paragraph (11) thereof) or 15C of the Securities and Exchange Act of 1934 ("Exchange Act"), shall not enter into or offer to enter into a retail forex transaction, except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe.<sup>1</sup>

Section 2(c)(2)(E) of the CEA took effect on July 16, 2011. As of that date,

broker-dealers, including broker-dealers also registered with the Commodity Futures Trading Commission as futures commission merchants, for which the Commission is the federal regulatory agency could no longer engage in retail forex transactions except pursuant to a rule adopted by the Commission.<sup>2</sup>

A retail forex transaction includes an agreement, contract, or transaction in foreign currency that is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act) that is offered to, or entered into with, a person that is not an eligible contract participant as defined in section 1(a)(18) of the CEA.<sup>3</sup> Certain foreign exchange transactions are not "retail forex transactions" under the CEA, even where one of the counterparties is a person that is not an eligible contract participant. These transactions include:<sup>4</sup> (i) "spot forex transactions" where one currency is bought for another and the two currencies are exchanged within two days;<sup>5</sup> (ii) forward contracts that create an enforceable obligation to make or take delivery, provided that each counterparty has the ability to deliver and accept delivery in connection with its line of business; and (iii) options that are executed or traded on a national securities exchange registered pursuant to section 6(a) of the Exchange Act.

The term "eligible contract participant" is defined in Section 1a(18) of the CEA and, in general terms, comprises certain enumerated regulated persons, entities that meet a specified total asset test or an alternative monetary test coupled with a nonmonetary component, certain employee benefit plans, and certain government entities and individuals that meet defined thresholds.<sup>6</sup> An

<sup>2</sup> See 7 U.S.C. 2(c)(2)(B)(i)(II)(cc) and 2(c)(2)(E). Congress expressly excludes from the CFTC's jurisdiction retail forex transactions where the counterparty, or the person offering to be the counterparty, is a broker or dealer registered under Section 15(b) (other than paragraph (11) thereof) or 15C of the Exchange Act.

<sup>3</sup> 7 U.S.C. 2(c)(2)(B)(i)(I).

<sup>4</sup> See, generally, the discussion in Exchange Act Release No. 69964 (Jul. 11, 2013), 78 FR 42439 (Jul. 16, 2013) at 42439-40.

<sup>5</sup> In August 2012, the CFTC issued an interpretation in a joint rulemaking with the Commission that "conversion trades"—trades in which a foreign exchange transaction facilitates the settlement of a foreign security transaction—are spot transactions and, therefore, are not subject to the prohibition under the CEA. See Exchange Act Release No. 67453 (Jul. 18, 2012), 77 FR 48207 (Aug. 13, 2012).

<sup>6</sup> See 7 U.S.C. 1a(18). The Commission and the CFTC adopted rules under the CEA that further define "eligible contract participant" with respect

<sup>1</sup> 7 U.S.C. 2(c)(2)(E).